SINGAPORE REPORTS

HITACHI ZOSEN ROBIN DOCKYARD (PTE.) LTD. v. LEE PUI KENG & ANOR.

[C.A. (Wee Chong Jin C.J., Thean & Chua JJ.) 1 June 1988]

[Singapore – Civil Appeal No. 63 of 1986]

Civil Procedure – Agreed damages in negligence suit – Interest to be awarded on such damages – Principles applied.

The deceased was killed in an industrial accident caused by the negligence of the appellants. The respondents, who were the administratrix and co-administrator of the estate of the deceased, appealed against the award of interest by the High Court in an action for damages for loss suffered by the dependants and estate of the deceased. The interest awarded by the High Court was 6% on $123,750, being 75% of the agreed damages from the date of service of the writ.

Held, allowing the appeal: (1) for the purpose of awarding interest, the court is only concerned with the pre-trial loss. In determining this amount, the court would have to ascertain the dependency at the date of death and at the date of trial to arrive at a median figure. However, as the parties are not agreed as to the dependency at the date of trial and there is no material on which the court can assess the amount of such dependency, it is impossible for the court to determine on a rational basis the amounts of pre-trial loss and future loss;

(2) the guidelines laid down by the House of Lords in *Cookson* v. *Knowles*[3] should now govern the assessment of damages in fatal accident claims. Following these guidelines, interest at half the current rate would only be awarded on the pre-trial loss and no interest at all would be awarded on the future loss. Hence, interest as awarded by the High Court was much too high and cannot stand;

(3) a fair and appropriate rate of interest in this case should be 2% per annum on $123,750 from the date of service of the writ to the date of judgment which amounts to $9,927.

Cases referred to:

(1) *Jefford* v. *Gee* [1970] 1 All E.R. 1202 (refd).
(2) *Cookson* v. *Knowles* [1977] 2 All E.R. 820 (C.A.) (refd).
(3) *Cookson* v. *Knowles* [1978] 2 All E.R. 604 (H.L.) (folld).
(4) *Lee Soon Beng* v. *Wee Tiam Sing* [1986] 2 M.L.J. 340 (distd).
(5) *General Tire & Rubber Co.* v. *Firestone Tyre & Rubber Co.* [1975] 2 All E.R. 173 (refd).

COURT OF APPEAL.

Benedict Chan (Lee Yuk Lan (Miss) with him) for the appellants.

Karuppan Chettiar for the respondents.

Cur. Adv. Vult.

Thean J. (delivering the judgment of the court): This is an appeal against the award of interest by Rajah J. in an action for damages for loss suffered by the dependants and estate of Wong Kam Thong who was killed in an industrial accident caused by the negligence of the appellants on 26 September 1981.

On the day of the trial, the parties agreed damages at $165,000 with liability to be apportioned on a 75:25 basis between the appellants and the respondents. As the parties could not agree on the question of interest, this issue was left for determination by the learned judge. After hearing counsel, Rajah J. awarded interest at 6% on $123,750 being 75% of the agreed damages from the date of service of the writ.

In arriving at this award, it would appear that the trial judge had applied the principles laid down in *Jefford* v. *Gee*[1] for fatal accident cases. These principles were set out by Lord Denning M.R. at p. 1209 of his judgment as follows:

> "When the courts award damages to a widow under the Fatal Accidents Acts, they award one lump sum calculated by taking the yearly pecuniary loss and multiplying it by a number of years' purchase. The courts do not divide it into two parts, such as special damage up to date of trial and future loss after the date of trial. They treat it as damage inflicted once and for all at the time of the accident. The damages are calculated at so many years' purchase, no matter whether the case is tried one month, one year, or three years after the accident. Quite often these claims take some time to investigate, both on the issue of liability and also on damages. A reasonable time should be allowed for such investigation. At the end of that time, if the case is not settled out of court, the plaintiff's advisers should issue and serve the writ and the defendants should make payment. From that time onwards it can properly be said that a widow and dependants have been kept out of their money. In these circumstances, we think that interest should be awarded on fatal accidents damages as from the date of service of the writ."

This practice of awarding interest on the entire capital sum in fatal accident cases has since been changed by the Court of Appeal in *Cookson* v. *Knowles*[2] which was upheld on appeal by the House of Lords (see *Cookson* v. *Knowles*[3]). The new guidelines for assessing damages in fatal accident cases are set out succinctly by Lord Diplock at p. 612 as follows:

> "(1) In the normal fatal accident case the damages ought, as a general rule, to be split into two parts:
>
> (a) the pecuniary loss which it is estimated the dependants have already sustained from the date of death up to the date of trial ('the pre-trial loss'); and

(b) the pecuniary loss which it is estimated they will sustain from the trial onwards ('the future loss').

(2) Interest on the pre-trial loss should be awarded for a period between the date of death and the date of trial at half the short term interest rates current during that period.

(3) For the purpose of calculating the future loss, the 'dependency' used as the multiplicand should be the figure to which it is estimated the annual dependency would have amounted by the date of trial.

(4) No interest should be awarded on the future loss.

(5) No other allowance should be made for the prospective continuing inflation after the date of trial."

Computation of damages

In the Court of Appeal, the declared purpose of this change in practice was to afford the dependants some measure of protection against inflation by allowing calculation of the future loss to be made from the date of trial when salaries and wages are likely in times of inflation to be substantially above where they stood at the date of death. However, the House of Lords, in affirming this approach, rests its decision on the different ground that the new guidelines would lend greater reliability to the assessment of damages up to the date of trial. This was expressed cogently by Lord Fraser at p. 614 who said:

"... when events have occurred between the date of death and the date of trial, which enable the court to rely on ascertained facts rather than on mere estimates, they should be taken into account in assessing damages."

In any case, it is now well settled that in calculating the post-trial pecuniary loss in fatal accident cases, the multiplicand should be based on the amount the deceased would have been earning at the date of trial had he been alive with no provision for future inflation.

Interest

The question of interest, which is directly relevant to the appeal in this case, received judicial consideration in the House of Lords. The basis for awarding interest at half the current rate on pre-trial pecuniary loss was explained by Lord Diplock at p. 612 as follows:

"Looked at from the juristic standpoint the justification for giving interest at only half the current rate is that the amount that the widow became entitled to at the date of her husband's death in respect of the instalments of the dependency which would have enured to her benefit up to the date of trial, would be the present value of each successive instalment as at the date of death. To calculate that value, the nominal amount of the first instalment after the death would not need to be discounted at all, that of the median instalment would need to be discounted at current rates, but for half the period only between date of death and trial while that of the last instalment would need to be discounted at current rates for the whole of the period. The discounted figure for the sum of the instalments which represents their present value as at the date of death would thus be less than the sum actually awarded by an amount which represents the discount at current rates of interest on the nominal amount of each instalment for a period which over all the instalments averages approximately half the period between the date of death and trial. So, in effect, interest for half the period has already been included in an award of the sum of the nominal amounts of the instalments due up to the date of trial. To give interest on the sum of the instalments for the whole of that period instead of only half would be to give interest twice. This may be avoided either by halving the period for which interest is given at current rates or by giving interest for the whole period at half the current rates, as suggested by the Court of Appeal."

The decision to disallow interest on the future loss follows closely the *Jefford* v. *Gee*[1] guidelines for pecuniary losses in personal injury claims. The reasoning behind this change in practice was explained by Lord Diplock at p. 611 as follows:

"Once it has been decided to split the damages into two components which are calculated separately, the starting point for the second component, the future loss ..., is the present value not as at the date of death *but at the date of the trial* of an annuity equal to the dependency starting then and continuing for the remainder of the period for which it is assumed the dependency would have enured to the benefit of the widow if the deceased had not been killed. To calculate what would have been the present value of that annuity at the date of death, its value at the date of trial would have to be discounted at current interest rates for the 2½ years which had elapsed between the death and trial. From the juristic standpoint, it is that discounted amount and no more to which the widow became entitled at the date of the husband's death. Interest on that discounted figure to the date of trial would bring it back up to the higher figure actually awarded. To give in addition interest on that higher figure would be not only to give interest twice but to give interest on interest."

We are of the opinion that the guidelines laid down by the House of Lords in *Cookson* v. *Knowles*[3] should now govern the assessment of damages in fatal accident claims. However, the application of those guidelines to the instant case poses one difficulty. The parties before the learned trial judge had agreed on a global sum of $165,000 as the quantum of damages on the basis that the defendants would be wholly liable. This global sum was not split into two portions: pre-trial loss and future loss. For the purpose of awarding interest we are concerned only with that portion which constitutes the pre-trial loss. In deter-

mining this amount, we would have to ascertain the dependency at the date of death and at the date of trial to arrive at a median figure. This resultant figure would then be multiplied by the time interval between the date of death and trial. The parties before us concede that the figure of $900 should be adopted as the dependency at the date of death. However, they are not agreed as to the dependency at the date of trial, and there is no material on which we can assess the amount of such dependency. It is therefore impossible for us to determine on a rational basis the amounts of pre-trial loss and future loss, both of which, however, must be contained in the global sum of $165,000.

In awarding interest at 6% per annum on the whole amount of $123,750 (*i.e.* 75% of $165,000 as agreed upon by the parties), the learned trial judge apparently was following the decision of this court in *Lee Soon Beng* v. *Wee Tiam Sing.*[4] That as a decision on an award of interest on actual loss in a non-fatal accident claim, which, in our view, is not of much assistance in a case such as this. The learned trial judge did not consider the guidelines laid down in *Cookson* v. *Knowles;*[3] nor was any argument addressed to him in that respect. Following those guidelines, interest at half the current rate would only be awarded on the pre-trial loss and no interest at all would be awarded on the future loss. Hence, interest at 6% per annum on the whole sum of $123,750 as awarded by the learned trial judge is much too high and cannot stand.

The next question is what is a fair and appropriate rate of interest which should be adopted here. Applying the guidelines in *Cookson* v. *Knowles*[3] – in so far as they can be applied – we think that a fair and appropriate rate of interest in this case should be 2% per annum on $123,750 from the date of service of the writ to the date of judgment which amounts to $9,927.

Finally, we do not think that this is an exceptional case in which the principles in *Cookson* v. *Knowles*[3] should be departed from. Counsel for the respondents have cited unreasonable delay on the part of the appellants in coming to a settlement. The accident took place in 1981 but the settlement was only reached at the date of trial. We do not think the appellants' conduct justifies an increase in interest. On the facts, it may well be that the appellants, being the deceased's employer, were better placed to know his salary and employment prospects but certainly not the dependency. In any case, interest is not awarded as a punishment to the debtor for withholding the money, although any unjustifiable delay on his part would be a reason for making an interest award just as unjustified delay by the plaintiffs in claiming it might be a reason for refusing to make such an award (per Lord Wilberforce in *General Tire & Rubber Co.* v. *Firestone Tyre & Rubber Co.*[5]).

In the circumstances, the judgment is varied by reducing the amount of $153,450 to $133,677 and reducing proportionately the amounts awarded to the dependants as follows:

(a) to Lee Pui Keng	$81,168
(b) to Wong Meng Hon	$43,429
(c) to Sing Fong	$ 6,080

(in each case rounded to the nearest dollar)

The amount of $3,000 awarded to Lee Pui Keng for funeral expenses remains unaffected. There will be no order as to costs and the amount deposited as security for costs be refunded to the appellants or their solicitors.

Order accordingly.

Solicitors: *Goh, Poh & Partners; Murphy & Dunbar.*

CHINA STEEL CORPORATION v. PAN ASIA SHIPYARD & ENGINEERING CO. (PTE.) LTD.

[C.A. (Wee Chong Jin C.J., Thean & Coomaraswamy JJ.) 13 May 1988]

[Singapore – Civil Appeal No. 12 of 1984]

Sale of Goods – Shipment of damaged steelplates – Clean bill of lading – Whether bill constituted evidence of the quality of the goods between seller and buyer – Trial court's finding of 50% liability on seller – Apportionment of damage – Appeal on – Dispute only on facts, not law.

The appellants entered into a contract of sale of steelplates with the respondents. The respondents alleged that the steelplates were in a damaged condition when they arrived. The respondents withheld payment of a portion of the purchase price so as to meet the costs of treating the damaged steelplates. The appellants sued the respondents for this sum and the respondents counterclaimed for the loss and damage allegedly suffered by them as a result of the damaged condition of the steelplates.

Before the trial, consent judgment was entered in favour of the appellants for their claim in the action. At the trial on the counterclaim, counsel for both sides did not